

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**VAN BRUGGEN PIT CLEANING,
INC.
Sioux County, Iowa**

ADMINISTRATIVE CONSENT ORDER
NO. 2011-AFO-07

TO: Van Bruggen Pit Cleaning, Inc.
Roger D. Van Bruggen, Registered Agent
4440 395th Street
Hospers, Iowa 51238

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Van Bruggen Pit Cleaning, Inc. (Van Bruggen) for the purpose of resolving issues regarding an uncertified applicator working for Van Bruggen. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jeff Prier, Field Office 3
Iowa Department of Natural Resources
Gateway North Mall – 1900 North Grand
Spencer, Iowa 53101
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Height, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN BRUGGEN PIT CLEANING, INC. and ADAM GESINK

Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Van Bruggen is a commercial manure service. On November 5, 2010, Jeff Prier, DNR Field Office 3 Environmental Specialist Senior, conducted a manure applicator inspection. Van Bruggen was getting ready to haul manure and the employees explained that they had just finished hauling manure from a different site the night before. One employee was driving the land application tank. When asked, the employee informed Mr. Prier that he was not certified. He stated that he and his boss had discussed his certification and had decided when weather permitted he would become certified.

2. On November 9, 2010, DNR issued a Notice of Violation letter to Van Bruggen for an uncertified applicator. The letter indicated the matter was being referred for further enforcement.

3. On November 9, 2010, Van Bruggen contacted DNR Field Office 3 and indicated all his employees had now taken the classes and proper certification had been submitted.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 459.315(2) and 567 IAC 65.19(1) state that a commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. Iowa Code section 459.102(12)"b" defines a "commercial manure service representative" as an employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service. During Mr. Prier's investigation, it was determined that an employee of Van Bruggen was not properly certified as a commercial manure service representative. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Van Bruggen agrees to do the following:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN BRUGGEN PIT CLEANING, INC. and ADAM GESINK

1. No Van Bruggen employee shall not handle, transport, or apply manure unless they are properly certified; and
2. Van Bruggen shall pay an administrative penalty of \$2,500.00, within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$2,500.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC Chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Van Bruggen saved time and money by not ensuring all of its employees were properly certified as commercial manure service representatives. Van Bruggen avoided the expenses of the training and certification fees. An estimated economic benefit of \$50.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The manure applicator certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly. Van Bruggen’s failure to ensure that all of its employees were properly certified threatens the integrity of the water quality program. Therefore, \$1,450.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN BRUGGEN PIT CLEANING, INC and ADAM GESINK


Culpability - Van Bruggen has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The manure applicator certification program and its requirements have been widely publicized throughout the animal feeding industry. The employee admitted that he was aware of the certification requirements, but that he and Van Bruggen had decided to wait until weather permitted for him to take the class. This demonstrates a clear disregard for the regulations. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Van Bruggen. For that reason Van Bruggen waives the right to appeal this administrative consent order or any part thereof.

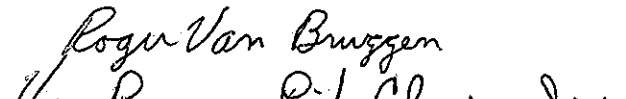
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 22nd day of
March, 2011.



Van Bruggen Pit Cleaning, Inc.

Dated this 14 day of
March, 2011.

Kelli Book, Jeff Prier - Field Office 3, EPA, VIII.D.4

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pd to Director of Iowa DNR
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